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ATTORNEY FOR APPELLANT:

SAMUEL G. VAZANELLIS
Cohen & Thiros, PC
Merrillville, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

GUARANTEED MUFFLER AND BRAKE,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 45A03-0611-CV-520
)	
WILLIE J. HARRIS,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable William Davis, Judge
Cause No. 45D02-0606-CT-69

April 18, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Guaranteed Muffler and Brake (“GMB”) appeals an entry of default judgment against it.¹ On appeal, GMB raises one issue, which we restate as follows: whether the trial court abused its discretion in denying GMB’s motion to recall default judgment, where the summons and complaint were sent to an incorrect address and were not received by GMB. We reverse, concluding that because GMB was not properly served, the default judgment was void and the trial court abused its discretion in denying the motion to recall the default judgment.

Facts and Procedural History

Willie Harris purchased a car from Russell Peoples. Harris took this car to GMB, located at 5924 Broadway, Merrillville, Indiana 46410, for repairs. On May 6, 2006, at around 12:00 p.m., Peoples entered GMB and asked to pick up the car belonging to Harris. A GMB employee gave Peoples the keys and he left with the car. At approximately 2:30 p.m. the same day, Harris arrived to pick up his car and was informed that Peoples had already taken it. Harris then called the Merrillville Police Department and filed a police report. The police report lists the address of GMB as 5920 Broadway, Merrillville, Indiana 46410.

Harris filed a complaint on June 9, 2006, naming GMB and Peoples as defendants. The complaint was mailed to GMB at 7920 Broadway, Merrillville, Indiana 46410. GMB did not file an answer, and default judgment in favor of Harris was granted on August 18,

¹ It appears from the chronological case summary that a default judgment was also entered against codefendant Russell Peoples. Peoples is not a party to this appeal and our decision concerning the default

2006. A default judgment order was then mailed to GMB at 7920 Broadway. It was returned because the address was invalid. GMB filed an answer, a demand for jury trial, and a motion to recall default judgment on September 25, 2006. The motion to recall default judgment was denied the same date. GMB now appeals.

Discussion and Decision

I. Standard of Review

We first note that Harris did not file an appellee's brief in this appeal, thus altering our standard of review. "Where no appellee's brief has been filed, the judgment may be reversed if the appellant's brief presents a prima facie case of error. In this context, prima facie error is error at first sight, on first appearance, or on the face of it." Van Wieren v. Van Wieren, 858 N.E.2d 216, 221 (Ind. Ct. App. 2006).

When reviewing a trial court's refusal to set aside a default judgment, our review is limited to determining whether the trial court has abused its discretion. King v. United Leasing, Inc. 765 N.E.2d 1287, 1289 (Ind. Ct. App. 2002). Although we give substantial deference to a trial court's decision, we also recognize that Indiana public policy favors resolution of cases on their merits instead of pursuant to default judgments. Id. at 1289-90.

II. Motion to Recall Default Judgment

"T.R. 60(B)(6) provides that a court may relieve a party from a final order or final judgment if the judgment is void." Clark v. State, 727 N.E.2d 18, 20 (Ind. Ct. App. 2000), trans. denied. "A judgment is void if it is rendered without due process." White v. White, 796 N.E.2d 377, 381 n.3 (Ind. Ct. App. 2003). "Due process requires that the defendant be

judgment does not apply to the judgment entered against him.

given adequate notice of the suit and be subject to the personal jurisdiction of the court.” Stidham v. Whelchel, 698 N.E.2d 1152, 1154 (Ind. 1998) (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 291 (1980)). “[A] judgment that is void for lack of personal jurisdiction may be collaterally attacked at any time . . . under Trial Rule 60(B)(6).” Id. at 1156.

If service of process is inadequate, a court does not obtain personal jurisdiction over a defendant. King, 765 N.E.2d at 1290. Any default judgment rendered without personal jurisdiction is void. Id. Where service of process is defective because a summons was sent to the wrong address, a default judgment must be set aside. Poteet v. Bethke, 507 N.E.2d 652, 653-54 (Ind. Ct. App. 1987); see also Mills v. Coil, 647 N.E.2d 679, 681 (Ind. Ct. App. 1995), trans. denied (service at wrong address insufficient to confer personal jurisdiction).

GMB argues that the trial court did not have personal jurisdiction over it when the court entered default judgment in favor of Harris, because GMB had not been properly served with the summons and complaint. The summons and complaint were mailed and a copy was delivered by the sheriff to 7920 Broadway, instead of to the correct address, at 5924 Broadway. GMB states that it never received the summons and complaint and did not receive notice of the suit until sometime after August 23, 2006.

Under these facts, when Harris filed his motion for default judgment and when the trial court entered the default judgment at issue, GMB had not been properly served. Therefore, the trial court had not obtained personal jurisdiction over GMB when it entered the default judgment. Because the trial court did not have personal jurisdiction and because any default judgment entered without personal jurisdiction is void, it was an abuse of

discretion for the trial court to deny the motion to recall the default judgment.

Conclusion

The trial court abused its discretion when it denied the motion to recall default judgment. We reverse and remand with instructions for the trial court to grant GMB's motion to recall the default judgment.

Reversed and remanded.

BAKER, C.J., and DARDEN, J., concur.